



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	State Mental Health, Mental Retardation and Substance Abuse Board
VAC Chapter Number:	12 VAC 35-11-10 et seq.
Regulation Title:	Public Participation Guidelines
Action Title:	Amend the Regulations
Date:	April 17, 2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The amended Public Participation Guidelines establish procedures to involve the public in the development of regulations by the State Mental Health, Mental Retardation and Substance Abuse Services Board (Board). The regulations (i) require the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department), on behalf of the Board, to maintain a list of individuals and organizations to be notified of the formation of regulations; (ii) allow individuals to petition the Board to develop new regulations or amend existing regulations; and (iii) establish the process to convene advisory committees to provide technical assistance to the Board in the formation and adoption of regulations. The amendment clarifies that the Board rather than the Department has the legal authority to promulgate regulations and includes new provisions for periodic review of regulations. Additionally, the amendments include provisions for using electronic technology to facilitate public participation in the rulemaking process.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

At its meeting on April 10, 2003, the Board adopted the amended Public Participation Guidelines, 12 VAC 35-11-10 et seq., for final promulgation.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

There are two sections of the Code of Virginia that provide legal authority for this regulation. Virginia Code § 37.1-10 authorizes the Board to promulgate rules and regulations that are necessary to carry out provisions of the law. Virginia Code § 2-2-4007 requires the Board to promulgate public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. The Office of the Attorney General (OAG) certified that the Board has the legal authority to promulgate these regulations and is required to do so. In addition, the OAG states that “(t)he regulations are constitutional and do not conflict with any federal or state statutes or regulations.”

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The general goal of the regulations is to articulate procedures to promote the participation of citizens in the regulatory actions undertaken by the Board. These regulations are an important tool to ensure that the public has the means to participate in the regulatory process. The Board’s existing Public Participation Guidelines were promulgated in 1995 and are now somewhat outdated. The provisions do not include the recent changes to the Administrative Process Act at § 2.2-4007 which pertain to petitions for rulemaking.

The amendment updates the regulations by including provisions for use of electronic technology to facilitate public participation in the regulatory process. It also adds provisions for periodic review, which will require the Board to review and receive public comment on all of its regulations on a routine basis to determine their effectiveness in achieving their goals. These updates should help ensure that the views of the public are reflected in regulations promulgated by the Board and that the regulations are designed to include essential protections for the health, safety and welfare of citizens.

In addition, the existing regulations consistently refer to the Department as the entity responsible for promulgation of regulations. This is not consistent with the Virginia Code, which conveys the authority for promulgation of regulations on the Board. The amendment clarifies that the Board rather than the Department has the legal authority for rulemaking.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The amendment includes a new “Definitions” section in Part I that defines the important terms used in the regulations. This should help to clarify the provisions.

Part II of the regulations has been changed from “Mailing” list to “Notification” List and includes provisions for communication between the agency and the public, either electronically or in writing. It also requires that notice of comment periods and proposed regulations be posted electronically. These provisions are intended to update the regulations and facilitate public involvement in the regulatory process.

A new Part V, “Periodic Review of Regulations,” has been added to require the Board to review and receive public comment on all of its regulations on a routine basis to determine whether these regulations are effective in meeting their specific goals.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The proposed amendments should be advantageous to private citizens and groups with an interest in issues relative to mental health, mental retardation and substance abuse services in Virginia. The updates to the regulation should improve the ability of citizens and groups to

communicate with the Board during the regulatory process and help to ensure that the Board considers all relevant issues and concerns when it develops regulations. By expanding the opportunities for such communication, the Board should maximize its ability to consider public input and develop regulations that are responsive to the needs of Virginia citizens.

The proposed amendment should improve the public's access to the regulatory process and should have no disadvantages to the public or the Commonwealth.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The agency has made revisions to Section 12 VAC 35-11-10, "Petitions for Rulemaking," since the publication of the proposed regulation. These revisions reflect the recent amendments to the Administrative Process Act that became effective of July 1, 2002. In addition, a definition of "Virginia Register" was added to the "Definitions" section to help clarify the regulations.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

The agency did not receive any comments from the public during the public comment period.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Throughout the proposed amended regulation, references to the "Department" have been changed to "Board" to indicate that the Board rather than the Department has the legal authority to promulgate regulations. In addition, Virginia Code citations, included in the regulation, which refer to the Virginia Administrative Process Act, have been updated to reflect the recent re-codification of this law. The following is a summary of other changes:

- + A new section 12 VAC 35-11-15 "Definitions" was inserted in Part I of the regulation. The new section defines the important terms that are used in the regulation including, "board," "department," "notification lists," "Virginia Register" and "Virginia Regulatory

- Townhall.” The inclusion of these definitions should help the staff and the public to better understand the provisions. The definition of “Virginia Regulatory Townhall” includes the internet address for this website to facilitate public access.
- + Part II of the regulations was revised and renamed “Notification Lists.” New provisions have been added in section 12 VAC 35-11-20 D of this part of the regulation stating that persons or entities on the notification list may request notices of regulatory issues to be sent to them electronically.
 - + New provisions were inserted in 12 VAC 35-11-30 requiring that persons on the notification lists be given instructions on how to obtain a copies of any proposed regulations during the public comment period.
 - + The provisions in section 12 VAC 35-11-40, regarding petitions for rulemaking, have been revised to conform to recent amendments to the Administrative Process Act.
 - + Provisions have been added in 12 VAC 35-11-60 to indicate that copies of proposed regulations, during the public comment period, shall be available on the Department’s website and that comments can be made by either regular mail, facsimile, on the Virginia Regulatory Townhall, or by electronic means.
 - + Section 12 VAC 35-11-70 has been revised to require meeting notices to be posted electronically as well as in the Virginia Register.
 - + Section 12 VAC 35-11-100 has been repealed. This section imposed unnecessary restrictions on terms and conditions for the appointment of ad hoc advisory committees to provide technical assistance to the Board assist with regulatory issues. By deleting this section, the amended regulations will allow the Board greater flexibility to appoint such committees when specific expertise is needed or when groups of individuals indicate their interest in working with the Board on regulatory issues.
 - + Part V, which consists of a new section 12 VAC 35-11-110 “Periodic Review of Regulations,” has been added to the regulation. This will require the Board to review and receive public comments on each of its regulations at least every three years, or otherwise directed by executive order. The purpose of such review is to consider whether such regulations are effective in meeting their specific goals. This should help to insure that regulations are updated periodically and are responsive to the needs and expectations of the public.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for

oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulation prescribes the process for involving the public in the development of regulations.

These regulations do not erode the authority and rights of parents in the education, nurturing and supervision of their children. The regulations do not discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse or one's children or elderly parents. This regulatory action should help to ensure that regulations promulgated by the Board will respond to the needs of the public in regard to mental health, mental retardation and substance abuse services and generally facilitate citizens' participation in the regulatory process.

The regulations should have no impact on marital commitment or family income.